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THE POPULAR INITIATIVE AS A METHOD OF LEGISLATION AND POLITICAL CONTROL

The popular initiative is usually referred to under the dual title of "the initiative and referendum." Its advocates treat of it as an extension of the referendum; its promotion is largely through the agitation of referendum leagues; and for these reasons the two terms seem to be generally, although erroneously, regarded as synonymous.

It is the object of this paper to show the difference between the initiative power and the referendum, and to point out the revolutionary principle imbedded in the initiative as advocated by its propagandists for adoption in the United States.

The scheme of the initiative includes: (1) "direct legislation" (the proposal of laws by petition and the adoption of them by majority vote); (2) the "veto of the people" (the submission by petition of laws passed by legislative bodies to the voters for sanction or rejection); (3) the "recall," or imperative mandate, by which through petition a faction, being displeased with the action of a public official, may require him to go before the voters again at any time against another candidate for the office, and if the official fails to receive a majority of the votes, he is dismissed, and the opponent holds the office for the remainder of the term.

The "recall" and the "veto" are the negative side of the general plan for substituting government by petition and the popular voice for government by representation.

The referendum proper, in its different forms, may mean one thing or another: (1) the voluntary, or optional, referendum, by which legislatures or councils may submit laws which they have passed for adoption or rejection; (2) the obligatory referendum, under which certain laws (usually those affecting public policy or large expenditures of public money) *must* be so submitted; (3) what may be termed the sentimental referendum, generally referred to as the "Public Policy Law," which requires the election officials, whenever petitioned by a certain percentage of voters, to place upon the ballot questions of public policy merely for the purpose of ascertaining the sentiment of those who vote thereon. The obligatory referendum and the popular initiative have been advocated for years by national and state leagues, and of late nowhere more persistently than in Illinois. The sentimental referendum is already in use in this state, and will be reverted to.

Thus the radical difference between the two, and the deception of constantly yoking them together, is readily seen. By the initiative it is proposed that the people may directly control legislation, upon a petition of a certain percentage of the voters, from 5 to 15, according to different times and places; this petition making it obligatory to place the question desired upon the ballot, "the action of the majority of electors to be final." Should it be a question affecting a whole state, the petition must be a percentage of the voters in the state, the majority of the same. Should the question affect only a political subdivision, the petition and the majority apply only to such subdivision. But in either case there is to be no appeal from the majority voting on the question.

In spite of occasional protests to the contrary, the popular initiative is founded upon the general theory that representative government in this country is a failure. It implies also that constitutional government is a failure. Assuming this, it proposes to give the people *en masse* law-making powers independent of and superior to legislatures and councils; and laws thus enacted must stand as final, in defiance of constitutions or supreme courts. It proposes legislation without deliberation, lodges all veto power

in the popular ballot, and in its last results transforms a constitutional representative government into an unconstitutional irresponsible democracy.

It is argued, usually with much vehemence, that "the people" have been deprived of the privilege of self-government, or at least of expressing their will by their votes. The first of the three questions of public policy proposed by the Referendum League of Illinois voted for on the separate ballot at the general election in November, 1902, was for a constitutional amendment to give the voters of the state power to initiate legislation upon petition, and rounded out the statement of the question by this stump exhortation: "thus restoring to the people the power they once held, but which they delegated to the general assembly by the constitution." Similar amendments have been sought in a majority of the states in the Union.

It is explained that there was a time when the people of the United States as a whole, having freed themselves from the domination of a foreign power, held all political power and privileges in themselves, and unwisely delegated it when they established a government by representatives under national and state constitutions. Advocates of the initiative continually refer to the New England town-meeting as the most perfect system ever invented for real self-government. They are fond of quoting Thomas Jefferson to the effect that "the wisest invention ever devised by the wit of man for the perfect exercise of self-government and for its preservation is the New England town-meeting." They also quote Professor John Fiske:

> Government by town-meeting is the form of government most effectively under watch and control. Everything is done in the full daylight of publicity. The town-meeting is the best political training-school in existence.

And also Mr. James Bryce, author of *The American Commonwealth,* who remarked:

> The town-meeting has been the most perfect school of self-government in any modern country. . . . . It has been not only the source, but the school of democracy.

Professor Frank Parsons, lecturer in the Boston University Law School, one of the ablest and most radical advocates of the initiative, says:

For nearly twenty years after the founding of Plymouth Colony, in what is now Massachusetts, the law-making was done in primary assembly of the freemen every quarter, and when the colony grew so large that it was difficult for the people to meet in this way four times a year, it was provided that every town should elect two delegates to join the bench in enacting all such ordinances as should be judged good and wholesome, and that the whole body of citizens should meet once a year to have a general oversight of the doings of the delegates, repeal any of their acts that were deemed prejudicial to the whole, and pass such new measures as might be needful in the judgment of the people. That was the referendum almost as it is advocated today.

In another place this author says:

The change from legislation by the people to legislation by final vote of a body of representatives chosen for a specific term was a transformation fraught with the most momentous consequences. . . . . The representatives can and do make and put in force many laws the people do not desire, and they neglect or refuse to make some laws the people do desire. Between elections the sovereign power of controlling legislation is not in the hands of the people, but in the hands of a small body of men called representatives. It appears, therefore, that the changes from legislation by the voters in person to legislation by delegates was a change from a real democracy to an elective democracy. It was a change in which self-government was fettered, and the soul of liberty was lost. This is not a government by the people, but a government by an aristocracy of office-holders.

All of the writers consulted who advocate "direct legislation" express themselves in similar terms. These enthusiasts shut their eyes to the vast change both in numbers and character of population in the United States since the colonial period. Not one of them takes any note of the fact, which has been demonstrated so often and completely that practically no one can be found to dispute it, that a system of law-making in popular assembly answering well the requirements of primitive or small rural communities fails miserably wherever the population is dense and heterogeneous; that in every city in the country it has either been abandoned, or has become the source or cause of the very worst feature of political corruption. In large towns and cities the system has invariably been seized upon by political pirates as a means of defeating the will of the citizens and of robbing the taxpayers.

While the initiative protagonists nowhere acknowledge this, they seem to realize its truth, and seek to adapt the town-meeting system to great and often turbulent populations by substituting

the ballot for the village assembly. They dwell with great emphasis upon the misrepresentation of delegates in legislatures and councils, upon the alleged fact that the people are thereby robbed of their privileges, and have alleged that they have practically no redress. They take little or no account of the great fact that legislatures are under the check of the veto of an executive elected by the people, or of the still more saving fact of their protection under the Bill of Rights and their constitution, by which laws are measured and decided upon by the Supreme Court, also elected by the people.

Since the agitation began in Illinois for a constitutional amendment to use "the referendum," as it is continually referred to, but always meaning the initiative power, the question has been many times asked: "Did not the legislature pass a referendum law? Has not Illinois the referendum already?"

The Forty-second General Assembly passed the so-called "referendum act," providing for the submission of questions of public policy to the voters. It can best be described by quoting the act:

An Act providing for an expression of opinion by electors on questions of Public Policy at a general or special election.

SECTION 1. Be it enacted by the People of the State of Illinois, represented in General Assembly: That on a written petition, signed by 25 per cent. of the registered voters of any incorporated town, village, city, township, county, or school district; or 10 per cent. of the registered votes [voters] of the state, it shall be the duty of the proper election officers in each case to submit any question of public policy so petitioned for, to the electors of the incorporated town, village, city, township, county, school district, or state, as the case may be, at any general or special election named in the petition. Provided, such petition is filed with the proper election officers in each case not less than sixty days before the date of the election at which the question or questions petitioned for are to be submitted. Not more than three propositions shall be submitted at the same election, and such proposition shall be submitted in the order of its filing.

SEC. 2. Every question submitted to the electors shall be printed in plain, prominent type upon a separate ballot in form required by law, the same as a constitutional amendment or other public measure proposed to be voted upon by the people.

Special attention is called to the fact that this permits ques-

tions only of public policy to be voted on, and only to ascertain the *sentiment* of the voters on such questions. The vote decides nothing. It leads to nothing definite. It simply gives the people, or rather the persons who circulate the petition, some basis to claim, should the vote be affirmative, that the legislature is in duty bound to pass laws in accordance therewith. This is the case at the present time. The questions of state and local initiative were voted on at the election of November, 1902. They did not receive a majority of all the votes cast, but they received a large majority of the votes cast on the questions. This was the basis for the Referendum League of Illinois demanding that the legislature submit the question of a constitutional amendment to establish the popular initiative in this state. The legislature (1903) refused to do so.

At the election in November, 1904, the Referendum League, under an alleged petition of 137,000 signatures, had submitted to the voters of the state three "direct" propositions, the first for direct primaries, the second for the "people's veto," the third for "home-rule in taxation." The first and second received a bare majority of all the votes cast in the state, the third a trifle less than a majority. All, however, had very large majorities of the votes cast on the questions, and their sponsors declare all to be the expressed will of the people, and that they should become laws.

At the city election in Chicago in April, 1904, the question of immediate municipal ownership of the street railways was voted on, under the Public Policy Law. The affirmative vote was 121,957; negative, 50,807; the total vote cast being 236,000 out of a registration of 400,000. Yet on this vote the loud and persistent claim has since been made that the council should "obey the will of the people" and proceed to acquire the street-railway properties, in the face of the absolute impossibility of its doing so on account of complex litigation and financial incapacity.

The Public Policy Law is useless and mischievous. It is deceptive in its objects and results, and used as a weapon by agitators.

As for the referendum, it has been in use in every state in the

Union, with the exception of Delaware. It was established by the earliest English colonists. The first constitution in America submitted to the people for ratification was that submitted by the general court of Massachusetts Bay in 1778. It was rejected, but two years later the constitution in force in Massachusetts today was drawn by the convention and ratified by a two-thirds vote. That seemed to establish a precedent, New Hampshire approving of a constitution very soon after in the same manner; and since 1821, when the first constitution of New York was submitted to the popular vote, the practice has been universal.

But this referendum does not grant any direct law-making privileges to the people; it simply gives the people the opportunity of approving or rejecting certain kinds of laws enacted by their representatives. Right here is where the initiative rushes madly forward and proposes that the voters themselves have the power of legislating. As before explained — it will bear repetition — it is proposed by constitutional amendment to make it possible for any voter, or collection of voters, large or small, to propose a state law; to circulate a petition that such a law shall be submitted to the electors at the next election, and, by securing the signatures of a number equal to from 5 to 15 per cent. (as proposed at different times) of the votes cast at the last election to make it mandatory upon the election authorities to place the question upon the ballot. If a majority of the votes cast upon the question are affirmative, it becomes a law, and the action of the majority is final. This means that the governor shall have no power of veto, such power being reserved to the majority vote. Should the law be in conflict with the constitution, still it could not be overruled by the Supreme Court; "the people" — that is, the majority voting — are the masters, and from their decision there can be no appeal. Says Parsons, previously quoted: "He is the sovereign whose will is in control."

Probably most of those who read this will exclaim: "But an amendment to the constitution, granting the simple right of initiative, does not repeal all other parts of the constitution, including those defining the judiciary and executive powers!" This can truly be said, but with the power of that initiative the voters

can annul any part of the constitution in the same manner that they enacted the first law. They would not need to go to the legislature and ask that a constitutional amendment be submitted to themselves. They would have the initiative; and while it may be said that under existing conditions there is no likelihood that a majority of the voters of Illinois would ever take such action, it can not be asserted positively that they never would use the power in this way, if it were conferred upon them.

It is only fair to the advocates of the initiative, the sincerity of some of whom cannot reasonably be doubted, to recognize their statements that they do not expect the people to use the power of the initiative except on rare occasions, their claim being that the mere fact of the voters possessing such power would stand as a menace against legislatures to enact vicious laws or refuse to enact wholesome laws. They place their faith in the intelligence, the calmness, and the righteousness of the people as always expressed by the majority voting.

The Illinois Referendum League states in its booklet, *The Referendum in a Nutshell:*

> Under the referendum the passage of vicious laws by the legislative bodies will practically cease, because the "bribers will not pay for goods that cannot with certainty be delivered." If bribery is to cease, corrupt men will have no incentive to become members of legislative bodies; and in consequence a better reputation will be given to law-makers, and a better grade of men, with long tenure of office, will soon be found in our general assembly and council chambers. Thus, instead of menacing the representative idea, the referendum in reality rescues it. The irresponsible power of our legislatures has a tendency to corrupt them. . . . . The wisdom of the referendum has been sometimes questioned on the ground that it is not safe to intrust so much power in the hands of the people. The answer may be that, while legislative bodies may be, as they often have been, bribed by privilege-seeking interests, the mass of the people are too numerous to be bribed, even if that were morally possible. . . . . The people as a whole are honest.

That is the foundation-stone of the whole scheme — an abiding faith in the honesty and intelligence of a majority of the voters, which includes ability, not only to comprehend the most complicated questions, but to draft laws concerning them. The writer of a pamphlet entitled *Political Egypt and the Way Out* says:

The credulous fool staking his money upon the result of games played with loaded dice or marked cards has a better chance of success than reformers under the present system with its "fixed primaries" and so-called representative bodies subject to deadlock, to caucus manipulation, to boss dictation, to log-rolling, to trickery, and to evasion of issues endangering party or the re-election of representatives. A governor with the veto, senate with power to shelve house bills, a lower house with ward heelers as members — here is a law-making machine capitally adapted to defeat or pervert the will of the people, and requiring a maximum of effort to secure a minimum of result. To none of these evils is direct majority rule subject.

It will be observed that several of the foregoing quotations refer to "the referendum." The reference, however, includes the initiative, and is coupled up with it wherever either is advocated. It is, in fact, the object of the most radical advocates of the vicious scheme to cloak it under the innocent title of "referendum." It is intended to deceive the people who do not take the trouble to examine the matter and discover the difference. The writer discovered from personal investigation that numbers who voted in 1902 (under the sentimental act) in favor of a constitutional amendment for the initiative and referendum did not comprehend the scope of the scheme at all, but supposed it to be for a general compulsory referendum law.

WHAT IS CLAIMED FOR IT

Probably as good a synopsis as is possible of the manifold reasons urged for the adoption of the initiative (and the referendum) is given by Parsons in a chapter entitled "Twenty Reasons for the Referendum." It is peculiar to all writers in advocacy of the system to make positive statements as to what their panacea for political ills will do. They never express opinions; they make declarations. Professor Parsons says:

It will perfect the representative system by eliminating serious misrepresentation.

Better men will be attracted to political life.

It will simplify elections, separating the judgment on men from the judgment on issues, and disentangle issues so that each may be judged on its own individual merits.

It will lessen the power of partisanship.

It will elevate the press — voting will turn more on reason, and mud will be less in demand in the political market.

It will educate the people, intellectually and morally.

It will stop class legislation and give labor her rights. . . . . Farmers and artisans are not fairly represented in legislative bodies, but at the polls they will have their due preponderance and can pass such laws as they please.

Direct legislation (i. e., the initiative) tends to stability, ... *acting as a safety-valve for discontent.*

It favors wealth-diffusion by depriving the wealthy of their enormous overweight in government, and giving preponderance of legislative power to the common people whose interests are opposed to the vast aggregation of private capital.

The income tax will have a chance, *and the nationalization of railways and telegraphs.*

All private monopolies will become public property or have their horns sawed off.

Experience here and in Switzerland has proven the measureless value of direct legislation, and the utter futility of all objections raised against it.

It is worth while to examine in some detail the assertions so confidently made. It will shed much light upon the real objects which it is hoped may be gained through the direct legislation scheme, as well as indicate the character of the forces that are being marshaled in favor of it.

Not much time need be spent on the claim that it will perfect the representative system. Logically, if the people are to make the laws, what difference does it make to them whether or not the legislatures are more perfect than now? Also the question may be asked here, as in connection with almost every other point involved: What reason is there to assume that, if the people are too incompetent or too negligent to select reliable representatives, they will be competent and watchful enough to frame and pass meritorious laws? The claim that better men would be attracted to political life is an assumption entirely impossible of demonstration or denial. But the next assertion, that the obligatory referendum and popular initiative system would simplify elections and separate the popular judgment on men from the judgment on issues, is a solecism so obvious that it almost creates admiration for the audacity of the utterance. The claim is more than absurd. Under any such scheme elections would be multiplied, and men and measures would be infinitely more confused than now. This has been proved by the mere effort to obtain such a law. It can-

not be otherwise. The election officers of Chicago base their objections to the scheme largely upon the fact that the so-called questions of public policy cause much inconvenience and confusion, and add considerably to the expense of elections. The establishment of the initiative and obligatory referendum in the state would no doubt increase the expense of elections to a great degree. In order to get separate judgments on measures as distinct from candidates, it would be necessary to submit measures at special elections. Do the proponents of the law consider this matter? A general election costs the tax-payers of Chicago very nearly $200,000. A judicial election costs them nearly $60,000. The cost of a general election in the state is well up toward half a million dollars. These amounts indicate only the public outlay. Take into consideration therewith the fact that every employee is entitled by law to two hours in which to vote — and employers know that he usually takes it — and some idea may be gained as to the expense incurred through loss of time. Besides, it is not contemplated that measures shall be submitted at special elections. It is likely that there would always be questions of so-called public policy on separate ballots at the general elections. The effect is, instead of simplifying matters, as is so absurdly claimed, to make of such matters a menace to candidates. The promoters of the measures seek to intimidate the candidates for office and to secure their pledge of support in case of their election. In many instances this is accompanied by threats. The result is that candidates pledge themselves to support measures they do not approve, and the more measures and questions submitted, the more of this kind of intimidation and stultification there must necessarily be.

There is another feature — one of detail, but nevertheless important — which ought to have attention here. It is the election petition. The initiative and referendum are based upon petitions. A law that has been passed, if distasteful to a class, a party, or a faction, may be held up until a petition is circulated to get a number of signatures equal to 5 or 10 per cent. of the voters at the last election to force a submission of it at the polls. Every experienced man knows about this kind of petitions. He knows

that in large part they are fraudulent and misleading. Every person who examined the alleged petitions of more than one hundred thousand signers, which the Referendum League presented to the election commissioners of Chicago in 1902 and 1904, knows that there were lists of hundreds of names that were copied in the same hand; that it contained the names of prominent persons long dead; and that it bore other evidence of being largely spurious. It can be said, on the authority of the attorney for the commissioners, that if trouble and expense had been taken to examine the whole of either petition, it would have been thrown out; but under the law the burden of proof rests with the objectors, and where it is not positively proved that there is not the required number of genuine signatures, the petition is accepted; that is, the known fraudulent signatures do not invalidate the others; and as it is practically impossible to submit such positive proof where the petition is very large, it is seldom urged. In these cases no one took even the pains to count the signatures to determine positively how many there were. They were accepted on the representation of the league.

The manner usually employed in securing a petition discredits the document. Copies of it are left at saloons, drug-stores, and on street corners, and anyone may sign any name and any number of names he chooses. A popular petition is a mark for the ribald — a popular joke. The few states that have adopted the initiative in part have stricter requirements concerning petitions; but where an attempt is made to get genuine signatures it involves great inconvenience and annoyance. Copies are usually taken through factories, wholesale houses, and offices where large numbers of men are employed, creating loss of time and distraction from business. Some large concerns in this state, as the writer personally knows, absolutely refuse to allow a petition of any kind to be circulated among their men during hours of employment. A law that will necessitate making the circulation of petitions almost continuous is in that respect alone open to very grave censure.

The probability of conflicting laws throughout the state, should the people of each subdivision have the power to enact

statutes to answer their own peculiar wants or notions, is too obvious for discussion. Uniformity of laws would vanish.

Next comes the claim that the law would lessen the power of partisanship. It may be allowed that the effect in many instances would be to weaken the barriers to some extent between the principal political parties, but it would be a great deal more likely to create factions that favor peculiar legislation. And the claim that it would stop class legislation, and give labor her rights, brings us to an interesting point. "Farmers and artisans are not fairly represented in legislative bodies," says the propagandist. What does this mean? Are farmers and artisans specially equipped for making and passing laws? Is it intended through the new mode to transfer the law-making powers to labor unions and agricultural alliances? Judging by the forces that are making for this system, it would seem that this is largely the object in view. The extracts already quoted, and the reasons advanced, warrant such conclusions. Indeed, they go farther: not only farmers and artisans, but the mass of common laborers, tens of thousands of whom have but recently been naturalized, who understand little or nothing of our governmental institutions, many of whom do not understand our language, are to be given an equal hand, not at passing laws, but at law-making. These elements provide in the initiative an instrument whereby it may be possible for them to effect such class legislation as they may desire, themselves being the legislators.

They readily approve of the initiative when it is held out to them, as it is done by Professor Parsons, and practically by every one of its advocates whom I have consulted, that "it favors the diffusion of wealth by depriving the wealthy of their enormous overweight in government;" that it will give the preponderance of legislative power to the common people, whose interests are opposed to alleged industrial injustice and the vast aggregations of private capital; that it will bring about public ownership of railways and telegraphs; that "all private monopolies will become public property, *or have their horns sawed off.*"

Plainly and directly speaking, this is promising to the labor element the establishment of socialism in its most radical form.

It foments and panders to class-hatred, discloses the aims of the radicals who are arrayed in favor of this pernicious innovation, and needs very few words to point a warning to those who believe in public order and honesty. In no instance have I misstated or exaggerated the utterances of those who speak for the initiative. It is easy to verify by conclusions with a volume of excerpts in exact line with those I have quoted. Here is another logical sweetmeat, also from Parsons, but quoted freely by other "referendum" writers:

> Direct legislation tends to stability, not only by the rejection of dangerous legislation, but by offering those who deem themselves oppressed an effective remedy by trial in the open court of public opinion — acting as a safety-valve for discontent.

For whose discontent? For the proselytizers, agitators, and fomenters of social discord? For the disciples of Emma Goldman and Herr Most? Let this not be considered a wild and unfair inference. Here is one of the most conservative of the initiative advocates, a professor in one of the leading law colleges of the country, who writes and publishes:

> It [the present order of things] is smothering discontent in hopelessness that breeds poison. *Every anarchist I ever heard express himself had much of truth in what he said.* It was his hopelessness of obtaining the justice he sought by peaceful means that made him advocate fire and bomb. An anarchist is a man who feels intensely the pressure of wrong conditions, and whose nature has more of recklessness than hope. Give us the referendum, and the path will be so plain that anarchy will soon go out of business.

Which simply means, if it has any meaning, that if anarchists may frame and pass just such laws as they like, they will become gentle and peaceful.

The assertion that an operative popular initiative, in general use throughout the American states, would tend to stability — meaning, as must be understood, governmental efficiency and justice, and security of individual rights — was clearly falsified by Mr. Parsons himself before he had finished his paragraph. And it is disproved by a glance at the organizations, as well as the individuals, that are the most clamorous for the initiative. There is not a firebrand agitator in the land who is not demanding it. Every preacher of the gospel of might, who believes that the

golden rule is founded on brute strength, demands it. It is a doctrine founded on might as expressed by numbers, taking no account of the rights of the minority. It appeals to men who abominate order and stability.

Much the same may be said with exact truth of the publications that are the most persistent advocates of the initiative. It is claimed that there are some 3,000 newspapers and periodicals in the United States that indorse the initiative and referendum. Nothing can be found to substantiate it; a great majority of them are merely for the referendum. It is significant, moreover, that the relatively few daily newspapers which are hot advocates of the initiative are, with rare exceptions, of the class afflicted with moral strabismus — notorious panders to morbid sensationalism and class-hatred. The explanation is obvious.

It may truthfully be said that the principal arguments of all the writers in the country favoring the initiative are based upon the declarations quoted at the beginning of this chapter. With these assertions as texts, thousands of pamphlets and a considerable number of books have been produced in which it has been argued *ad libitum* that the people have been steadily robbed of their rights; that congresses, legislatures, and councils have grown steadily more corrupt; and that the only beneficent scheme of salvation for all political and social ills is to place the law-making power in the hands of the populace and trust entirely to the wisdom of the majority.

Throughout the literature of the radical initiative protagonists runs this raucous song and refrain: "Laws are passed that the people don't want, and laws they do want are not passed. Legislatures cannot be trusted, for they are creatures of corrupt agencies. Only the initiative can destroy the private monopoly of legislative power and establish public ownership of the government!" This might be credited to any one of them, but it is enough to cite Parsons, *Direct Legislation,* p. 22.

Nothing could be more demagogical. There is no evidence to bear out the wail. There are, in absolute fact, very few meretricious laws in force in any of the states. Bad laws are sometimes passed, but they seldom stand long. The writer has

questioned jurists and lawyers of ripe experience, and there is no exception to the opinion that the great mass of laws are designed for, and in the main subserve, a good purpose. There are not a few unnecessary laws, but for the most part they are harmless. A law that meets public condemnation is soon repealed. "Freak legislation" is really the rare exception, and it is usually the result of class or factional clamor, at the mercy of which, under the initiative, it is proposed to place the supreme power of legislation.

This propagandism began in this country about a dozen years ago, and the propagandists claim to have made considerable headway, pointing to the fact that constitutional amendments granting the initiative have been voted in four states; namely, Utah, Missouri, South Dakota, and Oregon; and that the obligatory referendum requiring certain kinds of laws, usually relating to franchises, passed by the legislatures to be held in abeyance for a certain time before becoming operative, during which time, upon the petition of a small percentage of the voters, they must be submitted to the popular vote, has been adopted by Denver, Omaha, Los Angeles, and a number of other western cities. Their success appears to lie almost wholly with the referendum. Wherever the initiative has been imbedded in state constitutions, it has been in the way of permitting it to be employed locally, or on questions of franchises. Its adoption to this extent in South Dakota was in 1898; in Utah, in 1900; in Oregon, in 1902; in Missouri, in 1904.

It has been claimed that in the first three states named it has prevented bribery and bad legislation, on the ground that they have had less of these evils than formerly. But certain other states, without the initiative, also have had less; so nothing is proved for the system. In 1904 a former state senator of Oregon wrote: "The first effect of the referendum in Oregon is the comparative absence of charges of corruption and partisanship. We credit a good deal of this to the direct-legislation amendment." A few weeks after this was written the greatest political scandal in the history of the state was developed, a representative and United States senator being indicted for fraud. Therefore, all

claims and representations as to what benefits and reforms the popular initiative would work in this country are entirely speculative, except as it may be judged by the result of the law since it was generally adopted in Switzerland some fifteen years ago. In fact, this is practically admitted by the writer of *Political Egypt, and the Way Out,* who says:

> How do we know that direct legislation will do what is claimed for it? By what it has done in Switzerland, once corrupt, but today the model republic of the Old World. The only country in Europe from which one does not hear continual stories of strikes, panics, and lockouts, and in which the lobby has been destroyed and men are re-elected to office term after term regardless of their party because of their being able men.

This was also asserted in substance by J. W. Sullivan, who was one of the first Americans to make an examination of the Swiss referendum and initiative, and who has been one of the most uncompromising advocates of it. Mr. Eltweed Pomeroy, president of the National Direct Legislation League, who edits a periodical, published in Philadelphia, devoted to the subject, bases most of his arguments upon assertions of the beneficent results in the various Swiss cantons, and, like its other advocates, jumps directly to the conclusion that it is equally applicable in the United States, and would work even greater wonders here.

Before examining into the question of the Swiss initiative, some attention should be given to the high authorities among American statesmen, politicians, and literary men who are audaciously quoted by the writers on the popular initiative as present champions or past advocates of it. Through quotation-jugglery and far-fetched inference, they implicate Thomas Jefferson, James Madison, Andrew Jackson, Abraham Lincoln, and many others of less note; but upon clearer examination it is found that there is very little in their writings to warrant the assumption that they ever did or ever would subscribe to the system that strikes at the principle of representative government. Jefferson, as everyone knows, was a champion of democracy, but it is equally as well known that he set limits upon democracy, and that, while he was opposed to some principles of the national constitution, he was nevertheless a strong believer in constitutional guarantees. To quote from *The Popular Initiative,* by

O. M. Barnes, one of the few writers who have taken the trouble to expose the danger of the initiative:

> No one ever held more firmly than Jefferson to the doctrine that all governments must be limited to the exercise of just powers; and when, further on, he denounced acts of usurpation and abuse as evincing a purpose to employ "absolute despotism," he did not limit his denunciation to the acts of kings. In his messages and writings he keeps before us the superiority of a limited over an absolute government.

And again:

> The citing of the Declaration of Independence in support of this plan [the initiative], as was done, is a great perversion of that instrument and injurious to Jefferson's fame. Because he wrote that governments derive their just powers from the consent of the governed, it by no means follows that a measure is just or within the scope of rightful power, because a majority has sanctioned it. The Declaration says that all men "are endowed by their Creator with certain inalienable rights; that among these are life, liberty, and the pursuit of happiness; that, to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed." No power unjust by nature can be transformed into a just power by the consent of a majority.

The claim that Jackson was a friend of the popular initiative is based, so far as appears in the testimony, upon this passage in one of his inaugural addresses: "So far as the people can, with convenience, speak, it is safer for them to express their own will." What Andrew Jackson would say, were he alive now to speak on the proposition of government by irresponsible petitioning and popular vote, without regard to legislatures or supreme courts, may be left to the imagination.

With equal confidence these propagandists elect Abraham Lincoln as one of their own on the strength of the following quotations from his utterances: "Allow all the governed an equal voice in the government;" "Governments of the people, by the people, and for the people shall not perish from the earth." It is also pointed out that Lincoln, before the Civil War had been long in progress, made a proposition to the Confederate leaders to submit the differences between the North and South to the popular vote of all the states — northern and southern — with the agreement to abide by the result as indicated by a majority. In this manner he hoped to put an end to the war. Of course, the

offer was declined, as the Confederates well knew that the more populous North would outvote them. It is upon such evidence as this that the great emancipator is now made a witness to the efficacy of the initiative plan.

In a similar manner the historian W. E. H. Lecky and Lord Salisbury, in England, are made to favor the initiative, the latter on the strength of the utterance:

> I believe that nothing could oppose a bulwark to popular passion except an arrangement for deliberate and careful reference of any matter in dispute to the votes of the people, like the arrangements existing in the United States and Switzerland.

From Mr. Lecky we are given the following as evidence:

> The referendum would have the immense advantage of disentangling issues, separating one great question from the many minor questions with which it may be mixed. Confused or blended issues are among the greatest political dangers of our time. . . . . The experience of Switzerland and America shows that when the referendum takes root in a country it takes political questions to an immense degree out of the hands of the wire-pullers, and makes it possible to decide them mainly, though perhaps not wholly, on their merits, without producing a change of government or part predominance.

It will be seen from the above that Mr. Lecky in no way committed himself even to favoring the obligatory referendum, much less the popular initiative, and anyone who has read his work, *Democracy and Liberty,* well knows that he shows positive antagonism to anything like an unchecked democracy.

It must be admitted, however, that the pro-initiative writers quote from a large number of people more authoritatively. One of these is Mr. William Dean Howells; another is Rev. Lyman Abbott; still another, Mr. John Wanamaker; all of whom are on record unqualifiedly in favor of the direct-legislative scheme. There are also a number of reputable lawyers and educators committed to the experiment, whose motives the writer has not the least desire to impugn; and a long list of others, concerning some of whom, as safe authorities on political and social problems, there is likely always to be some divergence of opinion. Among such may be mentioned the late ex-Governor St. John, of Kansas; the late Governor Pingree, of Michigan; the late Edward Bellamy; ex-Senator Pettigrew; Professor George Gunton;

Hon. William J. Bryan; Hon. George F. Williams; Rev. B. Fay Mills (evangelist); Professor George D. Herron; ex-Governor Thomas, of Colorado; Professor E. W. Bemis; Hon. John G. Woolley; Hon. Sam M. Jones, of Toledo; Eugene V. Debs; Miss Margaret Haley; etc.

There still remains the stock claim that experience here and in Switzerland has proved the measureless value of direct legislation and the utter futility of all objections raised against it. This constant reference to Switzerland imposes the necessity of examining carefully in that direction.

THE INITIATIVE IN SWITZERLAND — TRUTHS AND UNTRUTHS CONCERNING IT

The authorities who have written most fervently upon the beneficent effects of the initiative — usually speaking of it as "the referendum" — in Switzerland are W. D. McCracken; Boyd Winchester, ex-United States minister to Switzerland; Francis O. Adams, ex-minister from Great Britain there; J. W. Sullivan; and Professor Vincent, of Johns Hopkins University. All of these writers appear to have entered upon their task with a feeling of joy at having discovered a scheme of political redemption for a fallen nation. Quoting them with exultation and approval follows Professor Parsons, who expresses his feelings thus:

> Fifty years ago Switzerland was more under the heels of class-rule than we are today; political turmoil, rioting, civil war, monopoly, aristocracy, and oppression — this was the history of a large portion of the Swiss until within a few decades. Today the country is the freest and most peaceful in the world. What has wrought the change? Simply union and the referendum.

Following this, the writer enters upon a glowing description of the many reforms that have been brought about in Switzerland, and while having given, in answer to his leading question, first credit to the union and second to "the referendum," he practically ignores the union thereafter, and attributes the whole political regeneration of the European republic to the referendum *and* the initiative. This may almost be said, without injustice, of the writings on the subject of the other authors mentioned. They seem to have undertaken more the laudation of the initiative than

to credit other agencies, which, to the unbiased examiners, appear to have had much to do with the results. Not one of them has employed the analytical method.

In a work of high standing among scholars, *Governments and Parties in Continental Europe,* by A. Lawrence Lowell, the history and working of the initiative and referendum in Switzerland are given (in marked contrast to those quoted above) with every evidence of impartial and close knowledge of the subject. Mr. Lowell shows that the adoption of the law was not so much the work of statesmanship as the result of accidental and peculiar national conditions. It was really the work of contending factions, some religious, others political or social. There was in former years lacking in the confederation a native representative system. This was due to the absence of a royal power, which was the great unifying force during the Middle Ages. Switzerland did not become sufficiently consolidated to have a central legislature, and no one of the separate states that made up the confederation was large enough by itself to need a representative system.

> The confederation being a mere league of independent states, the delegates to its diet acted like ambassadors, and . . . . were never given power to agree to final settlement of matters of importance. . . . . The old federal referendum meant, therefore, the right of the members of the confederation to reserve questions for their own determination.

In fact, the Swiss had no representative government until about the end of the eighteenth century. Another important fact should also be given due consideration. Switzerland was without the protection of the executive veto against unscrupulous or unwise legislation, and as a rule had no judicial process for setting aside unconstitutional laws. Such lack of restraint on the legislatures was no doubt an important factor favoring the adoption of the obligatory referendum, and afterward the initiative; yet it is hardly referred to by those who quote that country as a model for America to imitate. This is an example of the one-sided and partisan method employed by the pro-initiative writers.

Mr. Lowell declares that the modern referendum, as applied in Switzerland, is based on the theories of popular rights, derived

mainly from the teachings of Rousseau, who in the *Contrat social* decried representative government and advised that laws be enacted directly by the people.

Owing largely to her geographical situation, being a borderland of most other nationalities of Europe, Switzerland had her troubles growing out of racial difficulties. This accentuated the warring of factions. Their cantonal disaffections and contentions began with their history. The constitution which the first Napoleon imposed on the republic, and the readjustment of political conditions after the Napoleonic wars, created further dissensions. A league of seven cantons threatened to send no more commissioners to the diet, but it was finally dissolved by federal authority. In 1832 liberal cantonal reforms were introduced — without any aid of the initiative — and the federal constitution was revised in that year. The revision was voted down by factions — and it was a good revision, too — just as factions there are frequently voting down good laws today. Some of the contentious parties began to see in Rousseau's teachings of popular sovereignty a chance for advantage. It became a popular doctrine. Each faction, religious or political, believed it could by means of the initiative secure the enactment of its own measure into a law in spite of the legislature. According to the initiative authorities, all these parties were actuated by motives of pure patriotism and disgust with legislative corruption. Such talk is rubbish. On the authority of historians of high standing, it was simply a scheme employed for party advantage. At any rate, in 1863 the first cantonal initiative law was passed, and within the next half-dozen years six of the leading cantons followed the example. At the present time all of the twenty-two cantons of the federation have the obligatory referendum, and seventeen the popular initiative. The confederation adopted the referendum in 1874 as a constitutional measure, and in 1891 an amendment was voted providing for the initiative "when 50,000 voters demand the enactment, abolition, or alteration of special articles of the constitution." When a demand is made that a law passed by the legislature shall be laid before the people for acceptance or rejec-

tion, it requires a petition of 30,000 voters, or a demand of eight of the cantons.

Among the many reforms that have been effected in the republic during the last half-century, as claimed by the initiative advocates, are the public ownership of the liquor business, the manufacture of distilled liquors being a national monopoly; the institution of state life-insurance; a greatly improved factory act; a law for local option as to capital punishment — by states; a law forbidding compulsory vaccination; a law providing for religious instruction in schools; the national ownership of railways, telegraphs, and telephones; etc. It is also claimed that there has been no civil war during these years.

As to these laws, we have in America state option as to capital punishment, the same as in Switzerland; we have in most states adequate factory laws; and, as to the liquor business, how many people in America are anxious for our national government to engage in the manufacture and sale of distilled liquors as a monopoly? How many desire the repeal of our compulsory vaccination law? Is it probable that a majority of the voters of the nation desire the national ownership of railways, telegraphs, and telephones? There is, to be sure, loud agitation for them in certain industrial centers, and it is in these same centers where the movement for the popular initiative is most active.

Admitting that most of these measures, as well as many others adopted during the last half or three-quarters of a century in Switzerland, are real reforms, it does not appear that all have been brought about through the agency of the initiative, and it seems preposterous to suppose that no advance would have been made in the republic without the initiative. There were political turmoil and much corruption of legislatures there a half-century ago. There is comparative honesty in their legislative councils now. But are the reforms instituted in Switzerland during these years of greater importance or beneficence than those effected in England during the same time by reform measures without the initiative? Political corruption was rife in France under the last empire; it is generally recognized that there is less of it now, and greater national security; but they have had no popular initiative.

At a time soon after the Civil War our own national government seemed to be a hotbed of political and financial corruption; that has not been the case for many years; yet it did not require the initiative to correct the evil.

Perhaps no country in the world has made greater advance, both actual and relative, during the last quarter of a century than Mexico. From being rent and impoverished by revolution, constantly disturbed by factional agitation, corrupted by thieving officials, with little security of life or property, it has now excellent laws and wise administration of them, and a government that guarantees justice, and promotes social and industrial progress. And this has been accomplished under a rule the very antithesis of that obtaining in Switzerland.

That the initiative and referendum have not been the sublime successes in Switzerland that the pro-referendum writers have stated can be declared on the best authority. Albert Bushnell Hart, professor of history in Harvard University, and a well-known political and economic writer, made an extensive examination of their workings a few years ago, and professed himself astonished at the little good that had really resulted from them. He declares that under them vicious measures are continually being proposed, and that in many instances measures in accord with the most advanced thought that were passed by the legislature have been taken from it and voted down. He says that the result in Switzerland has not warranted the declaration made in this country that it will bring out the more intelligent class of voters.

But we do not have to depend upon Mr. Hart's or any other American's evidence. Leading Swiss statesmen and writers are ample authority. The credit, if there be any credit, of instituting the referendum for ordinary laws passed by legislatures belongs entirely to Switzerland. The popular veto there requires a majority of all the votes cast, whereas a new measure proposed by the popular initiative requires only a majority of the votes cast on the question to become a law. Mark the distinction. Both the popular initiative and the obligatory referendum were used spasmodically, and frequently with odd results, the first

years after they were adopted. In 1870 the manufacturing canton of Zurich voted down a law, which had been passed by the assembly, limiting the working-time of factory employees to twelve hours a day, designated mainly to protect the women operatives, a measure also forbidding the employment of children of school years. The law was opposed by the workingmen, heads of families, who feared that under it the earnings of their wives and children might be somewhat decreased. This is one instance of the benign, altruistic spirit controlling a democracy. Frequently within the past few years wholesome factory and educational laws have been voted down under the Swiss referendum. On the authority of Charles Borgeaud, a statesman and writer of high authority, the compulsory vaccination laws passed in the cantons of Zurich and Bern were also vetoed by the operation of the referendum. In Zurich, under the popular initiative, a law providing for capital punishment for the crime of murder was enacted, and almost immediately the minority that had opposed it circulated a petition, and by working up the popular feeling to a high pitch the law was voted down. This illustrates exactly how popular excitement may be kept alive by the scheme of petitions and public agitation, and how minorities may be changed into majorities by working upon popular sentiment.

Borgeaud also relates that some queer legislation has been worked into the national constitution by means of the initiative. One relates to the manner of slaughtering beef cattle. The agitation that resulted in this absurd piece of legislation in a constitution grew out of prejudice against the Jews and their peculiar method of butchering. It is one of the laws born purely of spite and prejudice, and is merely an index which shows that the state constitutions of America would soon be burdened with monstrous class legislation, should class-hatred and discontent ever succeed in making such a method of legislation supersede the general assemblies.

It may be said that vicious legislation enacted in that manner would be checked by rulings of the courts. But it must be remembered that the whole power of the initiative is based upon the declaration that an affirmative vote on any measure *is final;* that

it is not to be revoked either by the legislature or by the supreme court; and should the supreme court assume to exercise such superior authority, it can be disposed of in the same manner as that by which the law it seeks to annul was enacted. Supreme courts would very soon lose their power to pass upon the constitutionality of any and all legislation. It would become a mere judicial figurehead; one of the creatures of the popular law-making power, as the initiative proponents boldly assert, and subject constantly to their interference and intimidation.

Another eminent Swiss authority, Numa Droz, a statesman and economic writer of reputation among economists, and an ex-president of the republic, after giving a dispassionate history of the initiative and referendum and their workings in his country, with apparent inclination everywhere to favor the referendum, speaks in most doubtful terms concerning the initiative. He finds that it furnishes a basis for demagogism, and encourages hot-heads and agitators whose business it seems to be to sow discontent. Mr. Droz declares that the Swiss are uneasy under the popular initiative. In his own words:

> A democracy should rest on a secure foundation, and the power of the initiative puts it in question at every moment. Self-appointed committees and demagogues continually work for disintegration and destruction.

Of course, it will be asserted at once that it has not worked disintegration and destruction in Switzerland; which is true; but it has only been in operation as a national institution a few years, and it is impossible to say that nothing worse will ever come from it. The mere fact that only seventeen out of the twenty-two cantons have adopted the initiative is proof conclusive that the others have been and still are in doubt and fear of it. Mr. Lowell repeatedly points out that the weakness of the institution lies in the inability of the people to comprehend proposed laws. The idea of the right of everybody to make laws is attractive, but it has not proved of value.

I quote again from Borgeaud:

> A law that may become part of the constitution, stand as a model for future legislation, which judges will have to apply and jurists to expound . . . . may be drawn up behind closed doors or around the council board of some committee, which is then as important as the government.

Again I quote from Droz:

It is now generally agreed that the popular initiative might at any time place the country in a very considerable danger. From the moment that the representatives of the people have no more to say in the matter than irresponsible committees drawing up articles in a bar-parlor, it is clear that the limits of democracy have been passed and that the reign of demagogy has begun. The way is opened. . . . . A democracy ought to rest on a solid basis; it is now put in peril every moment.

Says the English writer, L. Tomn:

By the initiative they [the people] are placed at the mercy of the chance majority. The way is open to both capricious legislation and clumsy legislation.

And we do not have to look far for the authoritative opinion that this would apply more forcibly in America than in Switzerland.

Another Swiss economist, quoted by the Referendum League, and widely recognized as a reliable authority, is Simon Deploige. His review of the workings of the laws under question in Switzerland is comprehensive and clearly unbiased. His conclusions as to the initiative are deliberate and unequivocal:

Direct legislation is incompatible with the representative system. . . . . In my opinion, the experience of the cantons which enjoy the compulsory referendum are far from conclusive. . . . . It is a little ridiculous to talk of legislation by the people, when more than half the citizens refuse to exercise their legislative rights. . . . . The acceptance or rejection of laws which are at all complicated cannot be ascribed to either the good sense or the ignorance of the people, for the mass of the people has no opportunity of estimating the value of these laws.

It is needless to multiply quotations to show that the thought on this matter in Switzerland is not all one way, and that the experiments made with the initiative and compulsory referendum have not been universally beneficial. Enough has been given to steady the thoughts of any American who may be inclined to jump at quick conclusions. The sweeping assertions of the initiative propagandists regarding Switzerland are here discredited, and even if the law had been much more successful in that country than it has been, hardly anything would be proved to us. Most of the desirable things acquired by it there we already have in America. It is not admitted, and will not be, that government ownership of railways, telegraphs, etc., is really wanted here.

We do not want the government to monopolize the whisky business. Switzerland is no criterion for America in this matter.

In Switzerland the cantons vote state churches, and support them from the public treasuries. Is that an example for the American states to follow? Says Mr. Lowell:

> In a community as intricate as ours, legislation is a very intricate matter, and requires a great deal of careful study. This is far less true of Switzerland. . . . . The initiative has not been a success even in Switzerland, and there is no reason to expect it would work any better elsewhere.

A REVOLUTIONARY MEASURE

> Should the popular initiative with the referendum become the mode of making laws, the same power will control the constitution that passes the laws. That power can and will be disposed to remove all constitutional barriers to the law it favors. (O. M. Barnes.)

To speak of the initiative as a revolutionary scheme is not an extravagance of language. It is not only revolutionary in its possibilities, but in its *intent*. A representative government with the power of veto in the executive cannot exist in a state where the popular initiative is operative. To say, as some members of the Illinois Referendum League have said, that it is not intended to use the power to the full extent, is an idle answer. The elements that are giving the Referendum League its greatest support *demand the power only to use it*. In the councils of the Chicago Federation of Labor this has been more than once declared. One of the officials of that organization asserted that under the initiative and referendum the Teachers' Federation of Chicago, having joined the Federation of Labor, would have power enough to depose the present board of education of that city and to elect a board of its own choosing, meaning thereby that it would elect a board subservient to itself. Mr. O. M. Barnes reminds us that a resolution was presented in a labor congress at Cincinnati not long ago, and given prolonged discussion, demanding

> such amendment to the constitution of the United States, and the constitutions of the several states thereof, as will deprive the aforesaid supreme courts of power to set aside laws duly enacted by the legally chosen representatives of the people.

The *Michigan Law Review* states the case thus:

> Direct legislation proposes this: Whenever any law is pronounced uncon-

stitutional, by that fact, without any further action, it becomes imperative to refer the law in question to a vote of the people. The decision of the people settles at once, and without further dispute, the constitutionality of the law.

There is pending in Congress a bill for a compulsory eight-hour law, and the American Federation of Labor, which is sponsor for it, insists that it shall prohibit workingmen from working more than eight hours a day, as well as prohibit employers from requiring them to do so. The same bill, practically, was before the Fifty-seventh Congress, and was favorably reported by the Senate committee. But an attempt to forbid by law one man to work for another more than a certain number of hours a day, regardless of circumstances, and to punish him for so doing, is rightly characterized as an act of tyranny, and is simply one more forcible illustration of what would be attempted under the initiative.

Whether or not such dangerous power would ever be used to the extent that our constitution and bill of rights would be annulled is not the question for discussion. The danger of bestowing such power is the thing to be considered. Usurpation of power is just as possible by a democracy as by a tyrant, and history is replete with testimony that it has been used in just as tyrannical a manner.

When measures imposing burdens and taking away rights are to be passed into laws by this means, what will hinder the majority from so imposing the burdens that they will fall on other shoulders than their own, and so distributing the blessing that they will fall upon themselves?

A despotism of democracy, with its ignorance, brutality, and class-hatred, as continually exhibited in industrial turmoils, is the worst kind of despotism. Says Lecky:

A tendency to democracy does not mean a tendency to parliamentary government, or even a tendency toward greater liberty. On the contrary, democracy may often prove the direct opposite of liberty. A despotism resting on a plebiscite is quite as natural a form of democracy as a republic, and some of the strongest democratic tendencies are directly adverse to liberty. Equality is the idol of democracy, but with the infinitely various capacities and energies of men, this can only be attained by a constant, energetic, stringent repression of their natural development.

No student or thinker will for a moment deny that delibera-

tions of representative assemblies and the veto power of the executive have from the birth of this government proved such "a constant, systematic, stringent repression," and have prevented the whims and follies of many a movement, under popular excitement or discontent, from burdening statutes with meretricious laws. There is practically no deliberation in popular legislation. Voters learn something of candidates, of their moral and intellectual fitness. They learn little about measures. Some time ago, when it was proposed in Chicago to refund several millions of current or floating municipal debt by the issue of bonds, the question was submitted to the voters. The only possible result of the plan was to save the city several thousand dollars a year in a reduced rate of interest. Yet more than 49,000 voters cast their ballot against the proposition. Does anyone suppose they understood what they were voting against? The Referendum League of Illinois flaunted the 428,000 votes cast in 1902 (out of a total vote of 860,000) under the sentimental-referendum act for an initiative amendment as the solemn mandate of "the people." By inquiry it was ascertained that many who cast their ballot for the initiative and referendum did so because the tip had gone out from "the union" to vote for it, and that they had very little idea what it meant. As for that matter, I learned that others who voted for the two propositions did so believing that it was merely the referendum, and had no knowledge concerning the initiative feature; and some of these were men of affairs and education, too. It is not the members of labor unions alone who fail to grasp the substance of public measures. Neither they nor the clerks, nor the average business man, can reasonably be expected to do it under the complex conditions now existing. It is shown in Mr. Deploige's assertion, previously quoted, that the acceptance or rejection of laws which are at all complicated cannot be ascribed to either the good sense or the ignorance of the people, for the mass has no opportunity for estimating the value of them. If this is true of Switzerland — and experience has demonstrated its truth — how much more forcibly does it apply to Illinois, where the laws proposed outnumber those of Switzerland twenty to one!

Inasmuch as organized labor is a unit for direct legislation in this country, justifying its faith largely on the operation of the system in conducting the affairs of trades unions, it is desired to address to its members some interesting evidence for their especial consideration. What the actual results of the employment of the initiative in the conduct of labor organizations in America have been will not be discussed, for, so far as the writer knows, no history of such experiments has been written. But a complete, authoritative history of its use by similar bodies in England — the birth-land of modern trades-unionism — has been written. It is contained in the first two chapters of *Industrial Democracy,* by S. and M. Webb, authors also of *A History of Trades Unions, The Eight-Hour Day,* etc. There are in England no deeper students nor abler and more authoritative writers, on the subjects named. Their researches have been long and laborious, and this, together with their intimate personal association with industrial affairs, has made their works standards wherever they are known.

It is shown that in the early period of unionism in England it was the custom to submit questions, not only of policy, but of administration as well, to "the voices," that is, to the *viva voce* vote of the assembled members. This was adapted only to small organizations and simple purposes.

> As the delegate system came to be established, the delegate, or committee man, was regarded merely as a vehicle by which the voices could be conveyed. His task required no special qualification beyond intelligence to comprehend his instructions and a spirit of obedience in carrying them out.

For many years the unions labored under this ineffective policy — a policy which became less effective as the unions expanded, because, as our authors observe,

> the ordinary trade-unionist, unversed in the technicalities of administration, is unable to judge by what particular expedient his grievance can best be remedied. The ordinary citizen thinks of nothing but clear issues on broad lines. The representative, on the other hand, finds himself constantly called upon to choose between the nicely balanced expediences of compromise necessitated by the complicated facts of practical life.

To conduct the business of a great trade union requires executive ability. For more than a hundred years this fact was hardly recognized by the unionists. They held that an average one of

their number could go from the shop to the office of administration and meet all requirements. Even if one happened to fulfil expectations, he was not given much of a chance, for rotation in office was insisted upon. "In the local trade clubs of the eighteenth century democracy appeared in its simplest forms." And the authors add:

> It is significant to notice how slowly, reluctantly, and incompletely the trade-unionists incorporated in their constitutions what is often regarded as the specifically Anglo-Saxon form of democracy, the elective representative assembly.

After many years of ineffective struggle, the delegate meeting became in fact superseded by the referendum, in an attempt to adapt the scheme of popular control to large and increasing bodies, just as the advocates of the initiative in America today are seeking to apply, through its operation, the principle of town-meeting government to great cities and populous states. So long as unlettered men, inexperienced in business, strove to combine administrative efficiency with popular control, the struggle of unionism against trained, highly skilled opposition was hopeless. There was a development through decades out of the theory that "the voices" of the whole body should govern, and that each and every member should take an equal and identical share in the common project, into a logical administrative system. It is the clear and reliable history of the constitutional development in trade-union democracy.

> Those who believe that a true democracy implies a direct decision by the mass of the people of every question as it arises will find this ideal without check or limit in the history of the large trade unions [in England] between 1834 and 1870.

The official circular was the medium of balloting, and every issue was filled with crude and often inconsistent projects to be voted on. Every member was an executive.

The system worked disastrously, most so in connection with the rates of distribution and benefits.

> The disadvantages of a free use of the referendum (and initiative) became obvious to thoughtful trade-unionists, and the practical abandonment of the initiative ensued.

There was too much changing of rules — too much promiscuous and ill-advised law-making. Say the authors:

We see that half a century of practical experience with the initiative and referendum has led, not to its extension, but to an ever stricter limitation of its application. The attempt to secure the participation of every member in the management of his society was found to lead to instability in legislation, dangerous unsoundness of finance, and general weakness of administration. (Vol. I, p. 26.)

Yet these members were acting only upon questions connected with their organizations, about which they may be presumed to have known a good deal. Is it not reasonable to inquire what room there is to expect the multitude, either in England or America, to act more coherently or intelligently on complicated public questions that do not so nearly concern it. As to the experience cited there is no guesswork:

If, therefore, democracy means that "everything which concerns all should be decided by all," and that each citizen should enjoy an equal share in the government, trade-union history indicates clearly its inevitable result. Government by such contrivances [mass-meeting, referendum, initiative] leads straight either to inefficiency and disintegration, or to the uncontrolled domination of a personal dictator or an expert bureaucracy. Dimly and almost unconsciously this conclusion has after a whole century of experiment forced itself upon the most advanced trades. The old theory of democracy is still an article of faith, and constantly comes to the front when any organization has to be formed for brand-new purposes. The use of the initiative and referendum has been tacitly given up in all complicated issues.

There is much in these conclusions for every radical advocate of direct popular control:

In the democratic state, as in the trade union, the eventful judgment of the people is pronounced, not upon projects, but upon results. . . . . All that we have said as to the logical futility of the referendum, and as to the necessity of the representative, therefore, applies even more strongly to democratic states than to trades unions. For what is the lesson to be learned from trade-union history? The referendum, introduced for the express purpose of securing popular consent, has in almost all cases failed to accomplish its object. The failure is due, as the reader will have observed, to the constant inability of the ordinary man to estimate what will be the effect of a particular proposal. *What democracy requires is assent to results; what the referendum gives is assent to projects.* No trade union has, for instance, desired bankruptcy, but many trade unions have persistently voted for scales of contributions and benefits which have inevitably resulted in bankruptcy. If this is the case in

the relatively simple issues of trade-union administration, still more does it apply to the infinitely complicated questions of national politics. Trade-union history gives therefore little support to the referendum or delegate meeting, and points rather to the representative assembly as the last word of democracy. (Vol. I, p. 61.)

But the danger lies in the sway it gives to passion and prejudice, especially in periods of public stress. We need not go beyond the history of our own country; it is full of instances of popular caprice under exciting conditions. It will be remembered that in 1863 the new constitution which the constitutional convention of that year submitted to the voters of Illinois was rejected because a few members of the convention were reputed to be sympathizers with the states then in rebellion against the national government. That the rejection was not founded upon objections to the constitution itself was shown by the adoption a few years later of the constitution by another convention containing all the essential provisions of that of 1863. Well remembered are also the wild enmity that existed during those years and later throughout the agricultural states against the railroads, and the strange kinds of legislation that were attempted against them, in some instances with success. In a recent editorial in one of the Chicago dailies it was declared that during the excitement arising from the Civil War the operation of the initiative at that time would have hanged every copperhead north of Mason and Dixon's line. Its operation in the South at the time would have worked the same results upon all those who believed in the Union, or expressed any doubts upon the sacred character of the institution of human slavery. Local agitation, where the majority of the community are flagrantly in the wrong, is of frequent occurrence.

It will be said that, while communities or limited districts may become unbalanced, the whole people of a state will always be found clear-headed and in a majority for the right. Professor Parsons, in the opening paragraph of his book, *Direct Legislation,* points to the fact that the national Democratic platform adopted in Kansas City, and the national Populist platform the same year, both favored direct legislation, i. e., the initiative. This was stated as an argument in favor of the scheme. Professor Parsons

failed to state, however, that in the same year sixteen states in the Union voted by majorities, some of them exceedingly large, for an unlimited issue by the government of a badly depreciated currency, upon the theory that wealth consists of much money, no matter what part of it may be bogus. It is needless to ask what proportion of these same voters would indorse that proposition today. Nor is it necessary to multiply instances where whole communities have been committed to vagaries.

Besides the lack of information which necessarily incapacitates the mass of the voters from deciding intelligently about public measures, and prejudices that too often govern them, the venality of large numbers must be taken into account. The alleged virtue of the initiative is based upon the honesty, even more than upon the intelligence, of the masses. Yet it is as true as it is deplorable that time and again results of elections, municipal and state, if not national, have been obtained by the direct bribery of voters. This has occurred repeatedly in states where the average of intelligence and respectability is high, as well as in cities and wards of mixed and less enlightened populations. In Indiana, on the testimony of ex-Governor Durbin (and it has for years been common knowledge among politicians), there are tens of thousands of purchasable voters — voters who are in the market with their wares at every election. Rhode Island is as bad, or worse. That has been shown frequently, last by Lincoln Steffens. The negro vote, in northern cities especially, is always largely purchasable; but it is not alone the negro, nor the foreigner, but Americans, white and presumably respectable.

If direct legislation (meaning the initiative) is sound in theory and principle, there must be admitted some ground for the doctrine of anarchy — i. e., that without any restraint all will do right and crime become obsolete. But he has been a poor student who does not know that whenever a people becomes free from restraint, either of a strict constitutional or of an absolute government, such a people fails in its political experiment. Maine says: "Democracy is unprogressive, too often given to extortion." To make constitutional revision or amendments possible at any time and to any extent by a bare majority, which may be voting upon

impulse, is in reality to undermine the constitution. Monarchy is primeval, but unbridled democracy is not young in experiment, and has never worked even temporary salvation.

Mr. Oberholtzer, a competent writer on the referendum and initiative, and quoted approvingly by the Referendum League, says:

> If a constitution is to enter into the details of government and trespass on those fields of action before reserved to the legislature, it cannot have the power of permanence which it had when it was only an outline to direct legislation. It must change as laws, and laws change as needs of people change.

He might as well have said that with the power of the initiative they would change as the whims or passions of the people change, and that the constitution would become a mass of doubtful legislation. Mr. James Bryce dwells upon the fact that a rigid constitution prevents rash and hasty changes by legislation: "Every citizen is a part of the nation, and bound by duty to give time and thoughts to it." But this would become very inconvenient and burdensome if elections were multiplied, as they would be under a scheme of law-making by circulating petitions.

And another word must be said as to the status which the legislature would have under an operative initiative law. It would in fact be a body without dignity, lacking power and authority. It is useless for the initiative advocates to pretend that they have any other object than to supersede the legislature. Professor Parsons benignly says that with the initiative "the legislature will be the most important advisory body in the commonwealth," but he fails to point out in what way.

Finally, the whole question is one of returning to a system of primitive democracy which answered such excellent purpose for a wandering tribe or a small village or district. The historian Freeman, dealing with the fact, and contemplating the growth and expansion of such tribe, declares that "unless the device of representation was hit upon, it must shrink into a despotism or an oligarchy." Cree, another historical writer, says:

> History does show that it took that direction and that such consequences resulted. Democracy must recognize some principle of restraint upon its own passions, and some guards against its own deficiencies.

And another aptly says that the trouble with humankind has been to strike a balance because of the influence of mischievous demagogues.

It is pertinent to ask: What are the leaders of socialism and trades-unionism struggling for? Thomas H. Benton declared that the safety of the country depends upon the tranquillity of the masses. Who are disturbing the tranquillity of the masses? The problem of the popular initiative is plain and clearly defined. It is a fanciful theory that every voter is capable of governing and of administering intricate public affairs, against common-sense backed by universal experience; it is the power of popular license against representative government and constitutional security. No effort to obscure it by disquisitions upon its psychological nature and effects — by theorizing upon choice and coercion, and the separation of political from business functions — can conceal this issue. Psychological and sociological analyses wither before the raw fact that with the power of the initiative absolutism is established and the rights of the minority have no protection. The idea of the right of everybody to make laws is attractive, but it is a dangerous experiment to submit to a large and mixed population. In the language of Mr. A. L. Lowell, "the conception is bold, but it is not likely to prove of any great use to mankind; if, indeed, it does not prove to be merely a happy hunting-ground for extremists and fanatics."

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CHICAGO.